

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MARCEL PIERRE,

Plaintiff,

v.

21-CV-163-LJV  
DECISION & ORDER

STATE OF NEW YORK DEPARTMENT  
OF CORRECTIONS AND COMMUNITY  
SUPERVISION, et al.,

Defendants.

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On September 26, 2024, the defendants, the State of New York Department of Corrections and Community Supervision (“DOCCS”), Daniel J. Fahey, Nathan Coffey, and Shawn Dupuis, moved to dismiss the complaint for failure to prosecute. Docket Item 67 (Fahey’s motion); Docket Item 68 (DOCCS’s, Coffey’s, and Dupuis’s motion to dismiss). This Court then issued a scheduling order requiring the pro se plaintiff, Marcel Pierre, to respond by October 17, 2024. Docket Item 69. Pierre did not do so, and the scheduling order the Court sent to him was returned as undeliverable. Docket Item 70.

On December 9, 2024, this Court ordered Pierre to show cause “why his claims should not be deemed abandoned and dismissed” based on his failure to respond to the defendants’ motions to dismiss. Docket Item 74; *see, e.g., Johnson v. Comm’r of Soc. Sec.*, 519 F. Supp. 2d 448, 448-49 (S.D.N.Y. 2007) (noting that because plaintiff failed to respond to motion to dismiss, the Court “may deem [plaintiff’s] claims as abandoned”); *Palmer v. BCE Inc.*, 2004 WL 1752601, at \*2 (W.D.N.Y. Aug. 4, 2004) (stating that plaintiff’s “failure to respond to defendant’s motion to dismiss evidences his abandonment of the action”). The Court cautioned that “[i]f Pierre d[id] not respond by”

January 9, 2025, “this Court w[ould] deem his claims abandoned and grant the motions to dismiss on that basis.” Docket Item 74. The Court also reminded Pierre that pro se litigants are required to “furnish the Court with a current address at which papers may be served on the litigant” and that the Court may dismiss the case if a litigant fails to do so. *Id.* (quoting Loc. R. Civ. P. 5.2(d)).

Pierre failed to respond to this Court’s order to show cause, and the time to do so has passed. Further, the order to show cause this Court sent to him was returned as undeliverable. Docket Item 75. Accordingly, in light of Pierre’s failure to respond or to comply with Rule 5.2(d), this Court hereby deems Pierre’s claims abandoned and GRANTS the defendants’ motions to dismiss, Docket Items 67 and 68. The Clerk of the Court shall close this case.

SO ORDERED.

Dated: March 8, 2025  
Buffalo, New York

/s/ Lawrence J. Vilardo  
LAWRENCE J. VILARDO  
UNITED STATES DISTRICT JUDGE